

- (1) Claimant alleged that she injured her low back while working for the respondent on May 26, 1995. She claimed her low back was injured when she was lifting a male patient from a wheelchair to a toilet stool with the help of another employee. Both of the employees were using a gait belt that had been placed on the patient in order to lift him

onto the toilet stool. During this transfer process, the male patient struck the other employee, leaving the claimant with the full weight of the patient. As the claimant was bending forward to place the patient on the stool, she felt a snap in her low back. Claimant testified that she suffered tremendous pain that momentarily caused her to collapse to the floor. She immediately reported this accident to the charge nurse on duty who then sent her home.

On the day of the accident, claimant attempted to see Dr. Nelson White, her own physician, but was unable to obtain an appointment until May 31, 1995. Dr. White's medical records indicate he treated claimant for right sciatica with medication and iontophoresis therapy. The medical records also indicate that prior to the May 26, 1995 incident, claimant had been treated by Dr. White for right sciatica. Dr. White released the claimant to return to work with the restrictions of no lifting over twenty-five (25) pounds, no lifting above the waist, and no stooping or forward bending with weight. Dr. White referred the claimant to Dr. Vernon Rowe, a neurologist, who examined the claimant and recommended an MRI for diagnostic purposes. However, at the time of the preliminary hearing, September 29, 1995, claimant was not receiving treatment for her low back pain because the respondent had refused to pay for such treatment and she did not have the funds to obtain medical treatment on her own.

The respondent sent the claimant to Dr. Veto J. Carabetta, M.D., who examined the claimant on September 19, 1995. Dr. Carabetta's report is part of the preliminary hearing record. His impression was low back pain, etiology unknown. Dr. Carabetta concluded that from a medical perspective he would recommend plain film x-ray studies, then if needed, an MRI as recommended by Dr. Rowe. Dr. Carabetta noted a possibility of a compression fracture based on the patient's description of the mechanism of injury.

During claimant's testimony, she differentiated her sciatica pain she had prior to this accident and the pain she presently suffers. The sciatica pain was primarily in her right hip, where her present pain is in her low back.

The respondent argues that the claimant has failed to prove that her present symptoms in her low back are a result of the May 26, 1995 accident. Respondent contends that the claimant's current complaint is her continuing right sciatica problem that she had prior to May 26, 1995. The Appeals Board disagrees and finds, for preliminary hearing purposes, that the evidentiary record contains persuasive evidence through claimant's testimony, that she either suffered a new injury in her lower back or aggravated a pre-existing condition while performing her work activities for the respondent on May 26, 1995.

(2) Respondent also claimed that if it is found that claimant did suffer a work-related injury, she is not entitled to temporary total disability benefits because claimant was offered a job by the respondent within the restrictions imposed by Dr. White and claimant refused to accept this accommodated position. The Appeals Board is only authorized to review issues that are specifically set forth in K.S.A. 44-534a or when a party alleges that the Administrative Law Judge exceeded his or her jurisdiction pursuant to K.S.A. 44-551(b)(2)(A), as amended by S.B. 59 (1995). Whether claimant is entitled to temporary total disability benefits is an issue that the Administrative Law Judge is given the specific authority to decide, pending a full trial of the matter. See K.S.A. 44-534a(a)(2). Additionally, whether claimant is temporarily totally disabled is not an issue listed in K.S.A. 44-534a as jurisdictional. Accordingly, the Appeals Board does not have jurisdiction to review this issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, dated October 2, 1995, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael C. Helbert, Emporia, Kansas  
Marcia L. Yates, Kansas City, Missouri  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director